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6 UNITED STATES BANKRUPTCY COURT  
7 EASTERN DISTRICT OF CALIFORNIA

8 In re Case No. 13-10132-A-12F  
9 ANTONIO CABRAL and MARIA CABRAL DC No. DKE-3

10 Debtor.  
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12 SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW  
13 RE MOTION TO DISMISS AND FOR FILING BAR

14 Debtors Antonio Cabral and Maria Cabral have filed three Chapter  
15 12 bankruptcies in the last 29 months. Creditor Bank of America moves  
16 to dismiss this, the third, bankruptcy and seeks a 180 day filing bar.

17 DISMISSAL

18 Only a family farmer or family fisherman may file a Chapter 12  
19 bankruptcy. 11 U.S.C. § 109(f). Cabrals contend they are the former.  
20 "Family farmer" is a defined term and, as applicable on the petition  
21 date, means an "individual or individual and spouse engaged in a  
22 farming operation whose aggregate debts do not exceed \$3,792,650."  
23 Debts included scheduled debts, as well as proofs of claims and other  
24 evidence. *Quintana v. IRS (In re Quintana)*, 107 B.R. 234,239, n. 6  
25 (9th Cir. BAP 1989), aff'd. 915 F.2d 513 (9th Cir. 1990). The court  
26 finds that Cabral's debt is \$3,982,671.54, which is \$190,021.54 over  
27 the debt limit.

28 The debtor argues that the Bank of America has received

1 \$368,349.19, from an auction that must be applied to reduce the debt,  
2 bringing them within the eligibility limitation. Cabrals are wrong.  
3 First, there is no evidence before the court supporting this fact.  
4 LBR 9014-1(d)(6). Second, this money is admittedly held by the  
5 receiver, and not the bank. Second, the Stipulation for Stay Relief,  
6 March 5, 2013, ECF No. 40. Until the money is distributed by the  
7 receiver the debt to the Bank of America is not deemed reduced.

8 In the alternative, the court grants the motion under 11 U.S.C. §  
9 1208(c), finding cause in the form of bad faith. The particular facts  
10 supporting a finding of bad faith are those facts specified in the  
11 "Filing Bar" portion of this memorandum.

12 For these reasons, the motion to dismiss is granted.

13 **FILING BAR**

14 Title 11 U.S.C. § 349(a) provides, "Unless the court, for cause,  
15 orders otherwise, the dismissal of a case under this title does not  
16 bar the discharge, in a later case under this title, of debts that  
17 were dischargeable in the case dismissed; nor does the dismissal of a  
18 case under this title prejudice the debtor with regard to the filing  
19 of a subsequent petition under this title, except as provided in  
20 section 109(g) of this title." Section 109(g) is inapplicable to this  
21 case. As a result, § 349(a) does not serve as a bar to re-filing  
22 unless the court orders otherwise for cause shown. Cause has been  
23 established by a demonstration of bad faith. *In re Leavitt*, 171 F.3d  
24 1219, 1224 (9th Cir. 1999). Bad faith involves application of the  
25 "totality of the circumstances" including: (1) misrepresentation of  
26 the facts in the petition or plan, unfair manipulation of the  
27 Bankruptcy Code or otherwise prosecution of the case in an inequitable  
28 manner; (2) the debtor's history of filings and dismissals; (3)

1 whether the debtor  
2 only acted to defeat state court litigation; and (4) egregious  
3 behavior present. "A finding of bad faith does not require fraudulent  
4 intent by the debtor. [N]either malice nor actual fraud is required  
5 to find a lack of good faith. The bankruptcy judge is not required to  
6 have evidence of debtor ill will directed at creditors, or that debtor  
7 was affirmatively attempting to violate the law-malfeasance is not a  
8 prerequisite to bad faith." *Id.*

9 The court finds bad faith and imposes a 180 filing bar. The  
10 facts demonstrating bad faith are as follows. First, this is the  
11 third Chapter 12 case in 29 months. Compare, *In re Cabral*, No. 10-  
12 18874 (Bankr. E.D. Cal. 2010), with *In re Cabral*, No. 12-12050, and  
13 with *In re Cabral*, No. 13-10132 (E.D. Cal. 2013). The first was  
14 voluntarily dismissed; the second was dismissed on the motion of the  
15 bank. The third Chapter 12 has been pending since January 9, 2013.

16 Second, there has been misrepresentation of the facts. The  
17 debtor scheduled debt of \$2,985,178. It was actually \$3,982,671.54.  
18 This is a discrepancy of \$997,493.54.

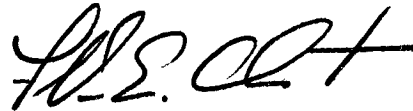
19 Third, the third case was filed to defeat state court litigation.  
20 After the second case was dismissed but before the third case was  
21 filed, the bank brought an action in state court, which included a  
22 request for a receiver. *Bank of America v. Cabral*, No. MCV 062020  
23 (Madera Superior Court 2012). Stipulation for Relief from Stay, March  
24 5, 2013, ECF No. 40. While it is true that the debtor stipulated to  
25 lift the stay to allow the receiver to liquidate the Cabrals' dairy  
26 herd, other portions of the state court action remain stayed. 11  
27 U.S.C. § 362(a).

28 Fourth, and finally, the court finds that the debtors have failed

1 to comply with court orders in aid of the discovery process associated  
2 with a Motion to Value Collateral, January 17, 2013, ECF Nos. 10-21,  
3 25-26, 29, 38-39, 45-48, 51-53, 76, 96-101, 110. Summarized, the  
4 debtor moved to value specified collateral that is the subject of the  
5 lien in favor of the Bank of America. The Bank of America opposed the  
6 motion, triggering the rights under Federal Rule of Bankruptcy  
7 Procedure 9014(c), including the right to discovery. On April 18,  
8 2013, the court ordered the debtors to allow access to the bank, or  
9 its representatives, for the purposes of appraising these assets.  
10 Civil Minutes, April 18, 2013, ECF No. 76. Cabrals have failed to  
11 comply with this order. Declaration of Morasci, May 17, 2013, ECF No.  
12 97. From this refusal the court finds that Cabrals are prosecuting  
13 the case in an equitable manner.

14 For each of these reasons, a 180 day filing bar is imposed.

15 DATED: June 3, 2013

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18 FREDRICK E. CLEMENT, Judge  
19 United States Bankruptcy Court  
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